

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GEORGINA B. ROQUES, *et al.*,

Plaintiffs,

v.

THE CITY OF WINFIELD, MISSOURI, *et al.*,

Defendants.

)
)
)
)
)
)
)
)
)
)

Case No.: 4:10CV-414-JCH

**APPLICATION FOR APPROVAL OF SETTLEMENT OF THE CLAIMS OF
GEORGINA B. ROQUES, AS MOTHER AND NEXT FRIEND OF G.B.R., A MINOR,
AND A.R., A MINOR WITH DEFENDANTS JASON A. KINWORTHY, JASON R.
BONK, RYAN PARKER, JOSHUA FRANKS, ERIN O'BRIEN, JAMES C.
JOHNSON, LARRY CUDNEY, AND THE CITY OF WINFIELD, MISSOURI**

Georgina B. Roques, as Mother and duly appointed Next Friend of G.B.R., a minor, and A.R., a minor, individually, and by and through counsel, hereby applies to the Court for an Order approving the contract of settlement of all claims and causes of action of G.B.R., a minor, and A.R., a minor, against Defendants Jason A. Kinworthy, Jason R. Bonk, Ryan Parker, and Joshua Franks, individually and in each of their respective official capacities as police officers for the City of Winfield, Missouri, Erin O'Brien, individually and in his official capacity as Chief of Police for the City of Winfield, Missouri, James C. Johnson, individually and in his official capacity as Chief of Police for the City of Winfield, Missouri, Larry Cudney, individually and in his official capacity as Mayor of the City of Winfield, Missouri, and the City of Winfield, Missouri (hereinafter "Defendants"), and in support thereof, alleges and states:

1. Georgina B. Roques is the duly appointed, qualified and acting Next Friend and Mother of G.B.R., a minor, age 16 years and A.R., a minor, age 16 years.

2. Georgina B. Roques, as Next Friend and Mother of both minors, claims that G.B.R. and A.R. suffered emotional and mental injuries and other injuries caused by each minor

allegedly witnessing and being present during interactions between their mother Georgina B. Roques and police officers of the City of Winfield, Missouri from 2005 through 2008 which included interrogations, detentions, stops, traffic stops, arrests, incarcerations, issuance of citations, and entry into a residence at 407 East Oak Street, Winfield, Missouri as is more specifically alleged in the Corrected First Amended Complaint for Damages filed herein and incorporated herein by reference (the "Occurrences"). Defendants have filed an Answer to the Corrected First Amended Complaint for Damages generally and specifically denying the claims of each minor as alleged by Georgina B. Roques, as the Mother and Next Friend of G.B.R., a minor, and A.R., a minor.

3. This Court has venue and jurisdiction over this cause of action because the alleged acts involving each minor occurred in the City of Winfield, Missouri located in the Eastern District of this Court.

4. Each minor Plaintiff, by and through their Mother and Next Friend Georgina B. Roques, claims that the Defendants were negligent and at fault for their injuries as alleged in the Corrected First Amended Complaint for Damages and are liable to each minor and while each Defendant denies any such negligence or liability, all Defendants having taken into consideration the expense, delay and uncertainty at trial have offered to enter into a settlement agreement with each minor and their Next Friend in which the Defendants have offered to pay each minor and their Next Friend the sum of Two Thousand Five Hundred Dollars and no/100 (\$2,500.00) in full settlement, compromise, discharge and satisfaction of any and all claims, demands, and causes of action which each minor and/or his next friend, or either of them, have, or might have, by reason of any and all emotional and mental injuries and other injuries to each minor, known or unknown, cost, loss, expenses, and damages arising out of the Occurrences described in

Paragraph 2 herein and in the Corrected First Amended Complaint for Damages in which each minor was allegedly injured.

5. Georgina B. Roques, as Next Friend and Mother of G.B.R., a minor, and A.R., a minor, has investigated fully the facts and circumstances related to the Occurrences and the emotional and mental injuries and other injuries sustained by each minor as a result thereof. Taking into consideration the extent and nature of each minor's injuries and the questionable and disputed liability in this matter, Georgina B. Roques, as Next Friend and Mother of each minor, believes that it is in the best interest of each minor to accept the offer of settlement and compromise and the Next Friend is desirous of accepting and has accepted the offer of compromise for each minor subject to the approval of this Court as requested herein.

6. Georgina B. Roques, as the Next Friend and Mother of each minor, advises the Court that neither G.B.R., a minor, nor A.R., a minor, incurred any medical bills as a result of any care and treatment caused by the Occurrences described in Paragraph 2 herein and in the Corrected First Amended Complaint for Damages. Georgina B. Roques, as the Next Friend and Mother of each minor, advises the Court that any medical bills incurred by either minor will be paid from the proceeds of this settlement on behalf of each minor and that all other properly asserted liens by any other healthcare provider and person arising from the care, treatment, and services provided to either minor will be paid from the proceeds of this settlement when asserted and found to be valid liens, including, but not limited to, medical, Medicare and Medicaid liens, and attorney liens. The Next Friend has agreed, subject to the approval of the Court, to hold harmless and indemnify Defendants and their insurer Savers Property & Casualty Insurance Company from any and all claims for attorney liens, liens, medical liens, Medicare and Medicaid liens and expenses, if any, which may be asserted against any Defendant and their insurer Savers

Property & Casualty Insurance Company as a result of any injury sustained by G.B.R., a minor, and A.R., a minor, arising out of the Occurrences or for any medical care and treatment provided to either minor as a result of their injuries, and to pay all valid attorney liens, medical liens, medical bills, Medicare and Medicaid liens, other liens, and expenses and costs incurred in the handling of any claims and liens arising out of any and all injuries sustained by either minor as a result of the Occurrences. The Next Friend further agrees to execute a General and Full Release of All Claims of the minors against Defendants and an Indemnity Agreement upon approval of the settlement by the Court and to pay all future medical bills incurred by either minor for the care and treatment of injuries arising out of the Occurrences as alleged in the Corrected First Amended Complaint for Damages from the Settlement Proceeds paid herein.

7. Georgina B. Roques, as the Mother and Next Friend of G.B.R., a minor, and A.R., a minor, retained Ellinger & Associates, P.C. and Blumenthal & Blumenthal, LLC to represent the interest of the Next Friend and both minors in these claims. Pursuant to the contract of employment, the Next Friend agreed to pay Ellinger & Associates, P.C. and Blumenthal & Blumenthal, LLC the sum of Two Thousand Dollars and no/100 (\$2,000.00) as an attorney fee. The Next Friend hereby requests the Court to approve the payment of the sum of Two Thousand Dollars and no/100 (\$2,000.00) to Ellinger & Associates, P.C. and Blumenthal & Blumenthal, LLC, for attorney fees from the Settlement Proceeds if this settlement is approved by the Court.

8. Since the value of the settlement is not greater than Ten Thousand Dollars and no/100 (\$10,000.00), the Next Friend requests that no estate/conservatorship be opened for the minors and that the Next Friend not be required to post a bond pursuant to Missouri Rules of Civil Procedure 52.02 and §507.150 R.S.Mo. (2002). The Next Friend requests the Court to approve this settlement and approve the payment of the net Settlement Proceeds after the

deduction of attorney fees in the amount of Two Thousand Dollars and no/100 (\$2,000.00) to Georgina B. Roques, as Mother and Next Friend of G.B.R., a minor, and A.R., a minor, to be used for the use and benefit of each minor.

9. Georgina B. Roques, with the advice of counsel, and having considered the circumstances, states and represents to the Court that she believes that this proposed offer of settlement and compromise with each minor is fair and reasonable, and should be approved by the Court and distributed to Georgina B. Roques, as Mother and Next Friend of each minor, for the use and benefit of each minor as requested herein.

10. Georgina B. Roques, as Mother and Next Friend of each minor, requests the Court to grant her leave to waive a jury herein and to submit all issues of the proposed contract of settlement to this Court for determination and approval.

WHEREFORE, Georgina B. Roques, as Next Friend and Mother of G.B.R., a minor, and A.R., a minor, prays the Court to authorize her to waive a jury herein, to hear and determine the issues in this case, and to enter an Order finding, adjudging and decreeing as follows:

A. That this Court has jurisdiction and venue over this cause of action and the claims asserted by Georgina B. Roques, as Next Friend and Mother of each minor and that Georgina B. Roques, as Mother and Next Friend of each minor is granted leave to waive a jury herein and for the Court to hear and determine all issues of the proposed settlement contract;

B. That the aforementioned settlement contract with the Defendants on behalf of each minor in the amount of Two Thousand Five Hundred Dollars and no/100 (\$2,500.00) is proper for a total settlement of Five Thousand Dollars and no/100 (\$5,000.00) and is in the best interest of each minor and is approved;

C. That an Order be entered approving the settlement contract and approving the payment of the Settlement Proceeds to Georgina B. Roques, as the Next Friend and Mother of G.B.R., a minor, and A.R., a minor, to be used for the exclusive use and benefit of each minor;

D. That the Next Friend be ordered, empowered, authorized and directed to execute a General and Full Release of All Claims of each minor to all Defendants and Savers Property & Casualty Insurance Company releasing and discharging each of them from any and all liability to each minor and their Next Friend on account of the Occurrences described herein in Paragraph 2 and in the Corrected First Amended Complaint for damages filed herein, and agreeing to indemnify and hold harmless each Defendant and their insurer Savers Property & Casualty Insurance Company from any and all claims for attorney fees, medical bills, medical liens and expenses, if any, which may be asserted against any Defendant or their insurer Savers Property & Casualty Insurance Company as a result of any injury sustained by G.B.R., a minor, and A.R., a minor, as described in Paragraph 2 and in the Corrected First Amended Complaint for Damages filed herein, or for medical care and treatment provided for any and all injuries sustained by each minor in the past and in the future;

E. That the Next Friend be ordered to pay all outstanding medical bills, Medicaid liens, Medicare liens, and attorney liens, and any other valid liens incurred by either minor for medical care and treatment of injuries sustained by either minor arising out of the Occurrences and other services provided to either minor arising out of the Occurrences described in Paragraph 2 and the Corrected First Amended Complaint for Damages filed herein, to pay Ellinger & Associates, P.C. and Blumenthal & Blumenthal, LLC the sum of Two Thousand Dollars and no/100 (\$2,000.00) for attorney fees, and to pay all future medical bills incurred by either minor by reason of the injuries sustained by either minor arising out of the Occurrences described in

Paragraph 2 and in the Corrected First Amended Complaint for Damages filed herein from the Settlement Proceeds approved by the Court and paid herein;

F. That the net amount of the settlement after the payment of attorney fees in the amount of Two Thousand Dollars and no/100 (\$2,000.00) in the amount of Three Thousand Dollars and no/100 (\$3,000.00) be paid to Georgina B. Roques, as the Next Friend and Mother of G.B.R., a minor, and A.R., a minor, to be managed and retained for each minor's exclusive use and benefit pursuant to the Order of this Court;

G. That the Next Friend file a receipt herein confirming payment of the Settlement Proceeds in the amount of Two Thousand Five Hundred Dollars and no/100 (\$2,500.00) to each minor for a total settlement payment of Five Thousand Dollars and no/100 (\$5,000.00) and the payment of attorney fees to Ellinger & Associates, P.C. and Blumenthal & Blumenthal, LLC in the amount of Two Thousand Dollars and no/100 (\$2,000.00);

H. That the Next Friend and Ellinger & Associates, P.C. and Blumenthal & Blumenthal, LLC file a receipt confirming payment to the Next Friend and Ellinger & Associates, P.C. and Blumenthal & Blumenthal, LLC of attorney fees in the amount of Two Thousand Dollars and no/100 (\$2,000.00);

I. That the Next Friend file a dismissal of the claims of G.B.R., a minor, and A.R., a minor, against the Defendants with prejudice upon the payment of the Settlement Proceeds from the settlement approved by the Court with each party to bear their costs and attorney fees;

J. That the Next Friend be discharged as the Next Friend of G.B.R., a minor, and A.R., a minor, upon approval of this settlement and the payment of the Settlement Proceeds to Georgina B. Roques, as Next Friend and Mother of each minor, as approved herein; and

K. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: 

GEORGINA B. ROQUES, as Next Friend and
Mother of G.B.R., a minor, and A.R., a minor

ELLINGER & ASSOCIATES, P.C.

By: 

Rory Ellinger, Missouri Bar No. 27098

Ronald A. Caimi, # 31492

797 West Terra Lane

O'Fallon, MO 63366

Telephone: (636) 978-8833

Facsimile: (636) 281-1504

E-Mail: roryelling@aol.com

Attorneys for Plaintiff Georgina B. Roques, as Next
Friend and Mother of G.B.R., a minor, and A.R., a
minor

STATE OF MISSOURI)
COUNTY OF St. Charles) ss.

On this 1st day of April, 2011, before me personally appeared Georgina B. Roques, as Next Friend and Mother of G.B.R., a minor, and A.R., a minor, known to me to be the individual who executed this Application for Approval of Settlement of the Claims of Georgina B. Roques, as the Next Friend and Mother of G.B.R., a Minor, and A.R., a Minor, and acknowledged that she fully understood the contents of this Application and freely executed the same for the sole consideration therein expressed, and upon the advice of her attorney.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Robyn S. O'Laughlin
Notary Public



ROBYN S. O'LAUGHLIN
My Commission Expires
September 26, 2013
St. Charles County
Commission #00408302

CERTIFICATE OF SERVICE

The undersigned hereby states that a true and correct copy of the foregoing was sent via First Class U.S. Mail on this 4 day of April, 2011 to:

D. Keith Henson
Paule, Camazine & Blumenthal, P.C.
165 North Meramec Ave., Suite 110
St. Louis (Clayton), MO 63105
Attorney for Defendants
Jason A. Kinworthy, Jason R. Bonk,
Ryan Parker, Joshua Franks, Erin O'Brien,
James C. Johnson, Larry Cudney, and
The City of Winfield, Missouri



Rory Ellinger